

# **EXHIBIT F**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Adv. Case No. 10-04377-smb

4 Adv. Case No. 10-04658-smb

5 - - - - - x

6 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

7 MADOFF INVESTMENT SECURITIES LLC,

8 Plaintiff,

9 v.

10 NELSON et al.,

11 Defendants.

12 - - - - - x

13

14 United States Bankruptcy Court

15 One Bowling Green

16 New York, NY 10004

17

18 May 8, 2019

19 10:22 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: NAROTAM RAI

1 HEARING re 10-04377-smb TRIAL

2

3 HEARING re 10-04377-smb Motion In Limine Number 1 to Admit

4 the Plea Allocutions of Bernard L. Madoff and BLMIS

5 Employees (also applies to Adv. Proc. No. 10-04658)

6

7 HEARING re 10-04377-smb Motion In Limine Number 2 to Admit

8 the Trial Testimony of Frack DiPascali (also applies to Adv.

9 Proc. No. 10-04658)

10

11 HEARING re 10-04377-smb Motion In Limine Number 3 to Exclude

12 Testimony and Exhibits Related to Defendants Asserted Tax

13 Obligations to Governmental Taxing Authorities (also applies

14 to Adv. Proc. No. 10-04658)

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16 HEARING re 10-04658 TRIAL

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25 Transcribed by: Sonya Ledanski Hyde

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8 ALSO PRESENT TELEPHONICALLY:

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12 ROBERT A. RICH

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1 deposition, and the new disclosure, Ms. Agatha Cole as a  
2 witness.

3 As to Mr. Madoff and Ms. Pitt, I think it -- the  
4 issue here is not the relevance, which is the argument that  
5 Defendants made in their papers. They're relevant. They  
6 worked at BLMIS. They perpetrated fraud. That's not the  
7 issue here.

8 The issue here is that Your Honor has ruled on.  
9 We've had years of discovery, years of discovery dispute,  
10 and Your Honor has already ruled that any deposition,  
11 particularly the Madoff deposition that was taken after the  
12 close of discovery in this case, would not -- are not --  
13 that they are not permitted to participate in Madoff's  
14 deposition, and that deposition would not apply in that  
15 case.

16 THE COURT: I understand that, but, you know, they  
17 weren't permitted to participate in the Bonaventure trial  
18 either, and I don't see the difference between your argument  
19 for using DiPascali's testimony and the argument to use  
20 Madoff's and -- I'm sorry, I forget the other witnesses'  
21 names -- deposition testimony. Isn't it really the same  
22 issue?

23 MS. HOANG: It's actually not, Your Honor. Your  
24 Honor has already ruled in this case as to Mr. Madoff and  
25 Ms. Pitt. As to the -- as to DiPascali, there's other

1 How was it structured?

2 A So, BLMIS, Your Honor, was structured -- kind of two  
3 sides of the business. One I'll refer to as the investment  
4 advisory side. Sometimes I might slip and call it House 17  
5 because it was located on the 17th floor of the Lipstick  
6 Building here in Manhattan. The other side was the  
7 proprietary trading and market-making business. And I'll  
8 just refer to that throughout the trial as the prop trading  
9 side of the business. But proprietary trading is basically  
10 when a broker-dealer uses its own money to trade for its own  
11 account to make profits for itself. So, somebody like  
12 Goldman will have a prop trading desk and they'll try to  
13 make money with their own money.

14 The market-making side is acting as a market maker  
15 in certain stocks and creating flow into the market, and  
16 acting as a broker-dealer to take orders for buys and sells.  
17 So, that was going on in the prop trading side of the  
18 business. And sometimes I might slip and refer to that as  
19 House 5. That's how that was known in a lot of the records.  
20 So, basically, the investment advisory side and the prop  
21 trading side -- two sides of BLMIS.

22 Q So, was the prop trading side of the business designed  
23 to buy and sell securities?

24 A Absolutely.

25 Q All right. What about the investment advisory side of

1 the business? What was it? What was it designed to do?

2 A Well, it was designed to purportedly trade stocks to  
3 buy equities, to buy options. Under the split strike  
4 conversion strategy, it would be using puts and calls. And  
5 I'll explain that in more detail. And it was also  
6 purportedly to -- when Mr. Madoff thought the timing was  
7 right, to unwind these trades and put the money supposedly  
8 in treasuries. That's what it was purported to do. The  
9 problem is it never did that.

10 Q So, I was going to ask you that. So, the proprietary  
11 trading side of the business bought and sold securities?

12 A Absolutely.

13 Q The investment advisory side?

14 A Never.

15 Q Okay. To operate a securities tradings business like  
16 BLMIS, do you need money?

17 A You do need money, yes.

18 Q Do you need computers?

19 A You need a vast computer system. If you're going to be  
20 a broker-dealer like BLMIS and do prop trading, you need  
21 sophisticated computer systems.

22 Q Let's talk about computers first.

23 A Okay.

24 Q You mentioned the AS400.

25 A Yes.



1 execute anything because there were no connections to it.

2 And then it could print out statements. So, some of the

3 same programs that were present over in the prop trading

4 side originally on the AS400 were taken, used in the IA

5 business to facilitate doing some of the same tasks, but it

6 lacked any capability to actually trade.

7 Q So, the proprietary trading side of the business had a  
8 trading platform?

9 A It had a trading platform and it actually traded.  
10 That's what it did.

11 Q Was it set up to buy and sell stocks?

12 A Absolutely.

13 Q How about options?

14 A Absolutely.

15 Q How about treasuries?

16 A Absolutely.

17 Q How about the computer at the investment advisory  
18 business, the AS400, was that a trading platform?

19 A Absolutely not, Your Honor.

20 Q Was it set up to buy and sell stocks?

21 A It was not.

22 Q Was it set up to buy and sell options?

23 A It was not.

24 Q How about treasuries?

25 A It was not.

1 THE COURT: Is that in the report?

2 MR. HUNT: It's in the report as well, Your Honor.  
3 I think it's Page 121, Figure 39.

4 THE COURT: Okay, thank you.

5 MR. HUNT: It kind of looks like a house. I don't  
6 know if we can get that up there.

7 Q Can you identify Exhibit 37 for the record?

8 A Exhibit 37 is my Figure 39 from Page 121 of my expert  
9 report. And it is a graphic that I prepared. Basically, in  
10 conducting the investigation, I wanted to see where the  
11 money was coming from, kind of like follow the money, and to  
12 really hone in on how the money went into the IA business  
13 and how it came out. And just to give a closure to any sort  
14 of thought that somehow the AI business was doing business  
15 through somebody else.

16 Q So, we'll probably be referring back to Exhibit 37 from  
17 time to time. Did you review the books and records related  
18 to each of the bank accounts held by BLMIS?

19 A I did.

20 Q Did you determine what bank account the BLMIS  
21 investment advisory business deposited customer  
22 (indiscernible)?

23 A It's what I've referred to as the J.P. Morgan Chase  
24 703 account. The 703 were the last three digits of the  
25 account number. That was the main account where customer

1 money was deposited in for the IA business.

2 Q What's a sweep account?

3 A A sweep account, Your Honor, is if you have a business  
4 checking account and you're maintaining a bunch of money in  
5 that checking account, banks typically don't pay very much  
6 interest on checking accounts. Historically, very low. And  
7 so to maximize your cash efficiency, you can arrange -- if  
8 the bank is large enough; usually this is with the larger  
9 banks -- a situation where every night above a certain  
10 amount, they may leave you with \$10,000 in the bank account.  
11 They will sweep out the rest of the money and put it into  
12 very short-term overnight investments.

13 It could be a bankers acceptance type note, it  
14 could be just a short-term treasury bill in and out. But,  
15 basically, it is a way to maximize idle money sitting in an  
16 account. Instead of just letting it sit in a checking  
17 account, it's able to earn a little bit more that way. And  
18 it goes out the night, it comes back the next morning. So,  
19 that's why they call it an overnight sweep, if you're using  
20 a sweep account as an overnight sweep.

21 Q Were there any overnight sweeps associated with the 703  
22 account?

23 A There were, yes.

24 Q If you could, Mr. Dubinsky, turn to Exhibit 38 in your  
25 binder, which is also Figure 37 on Page 117 in your report.

1       theoretically if you're doing trading?

2       A       Well that's not only theoretical, that's what actually  
3 happens in the market. If you, when you pull the data from  
4 Bloomberg, for instance, it will come out at about 50-50.

5       Q       So, if you look at the high in the lower right hand  
6 corner, talking about the proprietary trading business, what  
7 did you find?

8       A       So, this one looks at the buys. So, this was from  
9 January 2000 through November 2008. And the prop trading  
10 business was at about 51-49, almost 50-50, where you would  
11 expect to see prop traders doing the sort of buying to end  
12 up, so looking at the actual data from the prop trading  
13 business and running the formula that we just talked about.  
14 This is what, for that time period, it ended up being.

15       Q       And was the proprietary trading business actually  
16 buying stock during that period?

17       A       Yes. The proprietary trading business was buying stock  
18 for the proprietary trading desk and for the market-making  
19 clients of that side of the business. This has nothing--  
20 what we're talking about now has nothing to with the IA  
21 customers or IA business, at this point.

22       Q       If you look at the large pie on the left, talking about  
23 the IA business buys, what does that show?

24       A       So, this shows that in the IA business, what was  
25 recorded as the buys, was that the IA business was buying

1 when Duff & Phelps purchased my business, and so I  
2 liquidated some of the stock along the way.

3 Q What? I'm sorry?

4 A I had liquidated some of that stock along the way.

5 Q But if you hadn't liquidated it, it would have gone up  
6 significantly?

7 A That's correct.

8 Q Now, in the course of your work you became familiar  
9 with the Lazard report that was prepared by the Trustee in  
10 his efforts to sell the, what you refer to as the  
11 proprietary trading business.

12 A That is correct, yes.

13 Q And did you review that report?

14 A I did.

15 Q And did you find any factual inaccuracies in that  
16 report?

17 A No.

18 Q Now, you referred to the market making and proprietary  
19 trading business as one business. You call it the prop  
20 trading, right?

21 A For ease of discussion, that's what I did, yes.

22 Q Okay. The proprietary trading, in fact, was investing  
23 on Mr. Madoff's account. Isn't that true?

24 A On the account of the firm, not Mr. Madoff personally,  
25 but the account of the firm, as any prop trading desk would,

1 activities; isn't that true?

2 A Correct, yes.

3 Q And it was hundreds and hundreds of millions of dollars  
4 just since 2000 that was transferred from the 703 accounts  
5 to the Bank of New York account, which was used exclusively  
6 for the market making and proprietary trading activities;  
7 isn't that true?

8 A Well, it went into that bank account. I've never  
9 traced to what it was used for. It was used, presumably  
10 there were salaries being paid. Mr. Madoff's yacht was  
11 being paid out of there. There were a lot of things --  
12 office rent, houses -- a lot of things the money was used  
13 for.

14 Q And all of the securities that the traders were  
15 purchasing.

16 A It could have been. Once it's comingled, there's no  
17 way to determine what it's used for at that point.

18 Q Right.

19 A All I know, it was taken from the 703 account  
20 improperly, put over to the prop trading business.

21 Q Right. And how much money in total just from -- in the  
22 period from 2000 through 2008, how much money in total was  
23 transferred from the 703 account, which was exclusively  
24 investment advisory customers money, to the Bank of New York  
25 account, which was exclusively prop trading?

1 MS. CHAITMAN: Okay.

2 THE COURT: Okay.

3 Q Isn't it a fact that if a customer was credited with a  
4 T-bill which appreciated during the period of the customer's  
5 ownership, that the customer is entitled to that  
6 appreciation?

7 A I disagree with you.

8 Q Now, is it your testimony that the market making part  
9 of Madoff's business was a Ponzi scheme?

10 A No, I did not issue that opinion.

11 Q Okay. And is it your testimony that the proprietary  
12 trading part of the business was a Ponzi scheme?

13 A No, I did not issue that opinion.

14 Q Okay. So out of the whole operation of 180 or so  
15 employees, it's 8 to 10 employees who, in your opinion, were  
16 involved in a Ponzi scheme; is that right?

17 A That's correct.

18 Q Okay. Now, are you aware that the Nelsons never sent a  
19 check payable to Bernard L. Madoff Investment Securities,  
20 LLC?

21 A I don't know one way or the other.

22 Q Okay. And are you aware that every check that the  
23 Nelsons received was from an account in the name of Bernard  
24 L. Madoff, that they never received a check from the LLC?

25 MR. HUNT: Objection, Your Honor. That

1 earlier just said Bernard L. Madoff. Now this one says  
2 Bernard L. Madoff Investment Securities.

3 Q Okay.

4 MS. CHAITMAN: Can you go to the next year?

5 Q Okay. This is December 2005. It doesn't say LLC on  
6 the account, does it?

7 A I agree with you it does not.

8 Q Okay.

9 MS. CHAITMAN: Can you go to 2006?

10 Q Doesn't say LLC on December 2006, does it?

11 A It does not.

12 Q Okay.

13 MS. CHAITMAN: Can you go to 2007?

14 Q It doesn't say LLC on 2007, does it, December 2007?

15 A I would agree with you, yes, does not.

16 Q Okay.

17 MS. CHAITMAN: Can you go to any statements we  
18 have in 2008?

19 Q Okay. This is December -- November 29th to December  
20 31, 2008. Do you see it says Bernard L. Madoff Investment  
21 Securities?

22 A I see that.

23 Q Okay. So in the entire period applicable to the case  
24 against the Nelsons, J.P. Morgan Chase never issued a  
25 statement in the name of the LLC; isn't that true?



1 A Well, you showed me a statement that first started as  
2 Bernard L. Madoff when it was a sole proprietor. Then we  
3 both agreed that it became an LLC in January of 2001.  
4 There's then a name change on the J.P. Morgan Chase  
5 statements that then says Bernard L. Madoff Investment  
6 Securities; that certainly wouldn't be an individual. But I  
7 agree with you it does not say the letters LLC on any of  
8 these.

9 Q You're aware, are you not, that Mr. Madoff used the  
10 trade name Bernard L. Madoff Investment Securities prior to  
11 his formation of the LLC?

12 A Yes. I saw it on many documents, yes.

13 Q Okay. And, in fact, we just pulled up something, DX-X,  
14 which is dated December 19th, 1996. And do you see that  
15 even as far back as December 1996, he was using Bernard L.  
16 Madoff Investment Securities?

17 A I see that, yes.

18 Q So that was really just a trade name that he used,  
19 right?

20 MR. HUNT: Objection, Your Honor. This witness is  
21 not qualified to talk about trade names, corporate  
22 structure.

23 Q You know the difference between a trade name and an  
24 LLC, don't you?

25 THE COURT: Well, there's an objection. Do you

I N D E X

RULINGS

Page Line

Motion to Exclude the Robert Oppenheim's

Testimony Granted

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Motion by the Trustee to quash the subpoena

of Mr. Picard as Trustee Sustained

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Mr. Madoff Allocations Admitted

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: May 10, 2019